



COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0015 (CNS)

Proposal for a

COUNCIL REGULATION

amending, as regards the exemptions to the freezing of funds and economic resources and for the tenth time, Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Council Regulation (EC) No 881/2002 of 27 May, *inter alia*, repeals the existing measures in relation to Afghanistan (Regulation (EC) No 467/2001) and implements, *inter alia*, the freezing of funds and economic resources provided for by Common Position 2002/402/CFSP.
2. The freezing measures were imposed in conformity with Resolutions 1267(1999), 1333(2000) and 1390(2002) of the Security Council of the UN. By means of Resolution 1452(2002) of 20 December 2002, the Security Council decided that provision has to be made for certain exemptions and exceptions to the freezing of funds and economic resources. The Regulation should, therefore, be amended accordingly.
3. The exemptions will facilitate the application of freezing measures. The exceptions should be granted on grounds of humanitarian need. Resolution 1452(2002), which was adopted on the initiative of the EU members of the Security Council, addresses the concerns about possible infringement of fundamental rights, as expressed by the European Parliament in its Opinion of 11 April 2002 (COM(2002)117 - C5-0132/2002 - 2002/0059(CNS)).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP,¹

Having regard to the proposal from the Commission,²

Having regard to the opinion of the European Parliament,³

Whereas:

- (1) Common Position 2002/402/CFSP provides, inter alia, that the European Community should take a number of restrictive measures, including the freezing of funds and economic resources, in accordance with Resolutions 1267(1999), 1333(2000) and 1390(2001) of the Security Council of the United Nations.
- (2) The freezing of funds and economic resources has been implemented by means of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan⁴, as last amended by Commission Regulation (EC) No ../2003.⁵
- (3) By means of its Resolution 1452(2002) of 20 December 2002, the Security Council made a number of exemptions and exceptions to the freezing of funds and economic

¹ OJ L 139, 29.5.2002, p. 4.

² OJ C [...], [...], p. .

³ OJ C [...], [...], p. .

⁴ OJ L 139, 29.5.2002, p. 9.

⁵ OJ L [...], [...], p. .

resources under Resolutions 1267(1999), 1333(2000) and 1390(2002). These exceptions should be granted on grounds of humanitarian need and are subject to approval by the Sanctions Committee.

- (4) Consequently, Regulation (EC) No 881/2002 should be amended to bring it into line with Common Position 2002/402/CFSP and the Resolutions to which it refers,

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 2a is inserted in Regulation (EC) No 881/2002:

"Article 2a

1. Article 2 shall not apply to the use of funds or economic resources where
 - (a) any of the competent authorities of the Member States, as listed in Annex II, has determined, upon request made by an interested natural or legal person, that the use of these funds or economic resources is:
 - (1) necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
 - (2) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
 - (3) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or frozen economic resources; or
 - (4) necessary for extraordinary expenses, where sufficient justification for incurring these expenses has been provided by the person, group or entity whose funds and economic resources have been frozen; and
 - (b) after notification of findings referred to at point (a), the Sanctions Committee has not objected within 48 hours to findings made in respect of uses referred to at points (1), (2) and (3) thereof, or has approved the intended use described at point (4) thereof.
2. The competent authority listed in Annex II shall promptly confirm, in writing, the decision made by the Sanctions Committee, to both the person that made the request and any other person, body or entity known to be directly concerned.

Confirmation in writing issued by a competent authority listed in Annex II shall be valid throughout the Community.
3. Article 2(2) shall not apply to the addition to frozen accounts of
 - interest or other earnings due on frozen accounts;

- payments due under contracts and agreements which became effective, or due pursuant to obligations which arose, prior to the earliest date on which the account had to be frozen as a result of the entry into force of either Regulation (EC) No 337/2000,⁶ Regulation (EC) No 467/2001,⁷ or Regulation (EC) No 881/2002.

Like the account to which they are added, such interest, other earnings and payments shall also be frozen."

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

⁶ OJ L 43, 16.2.2000, p. 1.

⁷ OJ L 67, 9.3.2001, p. 1.